

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



74-1550

74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
  
Plaintiff-Appellee,  
  
-against-  
  
CARMINE TRAMUNTI, et al.,  
  
Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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253 DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. T(38) - Pages 5366 to 5380

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5366

UNITED STATES OF AMERICA

vs.

73 Cr. 1099

CARMINE TRAMUNTI, et al.

New York, March 9, 1974;  
10.00 A.M.

Trial resumed.

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(At 10.00 o'clock a.m. the jury assembled  
in the juryroom to continue to deliberate upon  
a verdict.)

(At 11.00 a.m. a note was received from  
the jury.)

THE COURT: I received a note from the jury,  
which reads as follows:

"Dear Judge Duffy:

"We would like to hear the testimony regarding  
Count 3, 4, 5 and 6 against Louis Inglese. We  
believe this is contained in Primrose Cadman's  
testimony.

"Sincerely, Madam Forelady."

Mr. Clerk, will you mark this as a Court's  
exhibit, please.

(Court's Exhibit No. 77 was marked for  
identification.)

THE COURT: I gather what they want is Primrose

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1 tp2

2 Cadman's testimony read back. I am going to have the court  
3 reporter read the entire thing, both direct and cross.

4 All right.

5 MR. FISHER: If your Honor please, I am represent-  
6 ing Mr. Inglese at this time.

7 I would submit as well that the testimony of the  
8 witness, the only witness offered on Mr. Inglese's behalf,  
9 be read as well, since the question asks for the testimony  
10 relating to those counts which they believe to be Primrose  
11 Cadman, but that is not all of the testimony and I believe  
12 the direct and cross of that witness is very brief and in  
13 the interests of justice I think that should be read as  
14 well.

15 MR. PHILLIPS: They asked for the testimony of  
16 Primrose Cadman, I believe your Honor just read in the note.

17 THE COURT: They asked for the testimony relating  
18 to those counts.

19 MR. FISHER: I would offer the services of my  
20 voice, your Honor.

21 THE COURT: Thank you.

22 How long is the testimony? Who was it?  
23 Zimbardo.

24 MR. PHILLIPS: It is fairly lengthy.

25 MR. LOPEZ: I have it here.

1 tp3

2 MR. PHILLIPS: Your Honor said direct and cross  
3 of Primrose Cadman. I assume that would include the  
4 redirect and recross.

5 THE COURT: Yes. All right, bring in the jury.

6 (Jury present.)

7 MR. FISHER: Your Honor, may we approach the  
8 bench?

9 THE COURT: Yes.

10 (At the side bar.)

11 MR. FISHER: Would your Honor advise the jury  
12 simply that Mrs. Rosner was required to appear in front  
13 of another judge now and that's why she is not here, so they  
14 don't think she, you know, is disinterested in these pro-  
15 ceedings.

16 I know that is where she is and I am sure if she  
17 could have been here now she would have been. I don't think  
18 Mr. Inglese should even risk the prejudice that might occur  
19 if they thought that she didn't care about what happens  
20 here.

21 THE COURT: Why not?

22 MR. CURRAN: No objection.

23 MR. FISHER: Thank you.

24 (In open court.)

25 THE COURT: Good morning, ladies and gentlemen.

1 tp4

2 I should point out to you that Mrs. Rosner is  
3 not here today at this time and there is a reason for it.  
4 She was required to appear before another judge in this  
5 building who is also sitting today.

6 However, we did receive this note from you and  
7 I am going to read it to you and then I am going to tell  
8 you what we have agreed to do. Please don't put up your  
9 hand and say, "No, we don't want that." Just listen to  
10 the testimony as it is reread.

11 If you want something different, please go back  
12 into the juryroom and send me a note saying, "We want some-  
13 thing different."

14 I am going to say this first. All right?

15 You stated, "We would like to hear the testimony  
16 regarding Count 3, 4, 5 and 6 against Louis Inglese.  
17 We believe this is contained in Primrose Cadman's testi-  
18 mony."

19 I am going to have Primrose Cadman's testimony  
20 read to you. There is, however, also the testimony of  
21 Mr. Joseph Zimbardo. I am going to have Mr. Zimbardo's  
22 testimony read to you, also.

23 All right. Since I talked so much yesterday,  
24 I am going to ask the court reporter to do the reading.

25

1 tp5

2 (The testimony of the witness Primrose  
3 Cadman was read to the jury.)

4 (The testimony of Joseph Zimbardo was read  
5 to the jury.)

6 THE COURT: All right, Marshal, take the jury  
7 out.

8 (At 12.50 p.m., the jury retired to the juryroom  
9 to continue to deliberate upon a verdict.)

10 (At 2.15 p.m. a note was received from the  
11 jury.)

12 THE COURT: I received another note from the  
13 jury which is going to be marked as a Court's exhibit.

14 It is a very simple thing. You don't even have  
15 to sit down if you are in the process of doing anything.

16 "Dear Judge Duffy:

17 "The jury would like another copy of the  
18 indictment to facilitate our deliberations.

19 "Sincerely, Madam Forelady."

20 MR. KING: Judge, would I be out of order in  
21 asking the Court that in view of the jury's request for  
22 the indictment that the bills of particulars go along with  
23 it as being part of the pleadings?

24 THE COURT: No. I am going to give them a copy  
25 of the indictment, but that is all.

1 tp6

2 MR. KING: I think it restricts the language of  
3 the indictment, Judge, or amplifies it anyway.

4 THE COURT: No, I don't think so.

5 All right, gentlemen, I have run into a logistic  
6 problem which I might tell you about because it is going to  
7 affect everybody here. The logistics problem is simple  
8 enough. I can't find a restaurant available here to feed  
9 the jury dinner.

10 I recognize that there is Chinatown, but we  
11 have some people who don't like Chinese food, and I recognize  
12 that we have Jambone's and Antica Roma, but I would hate  
13 to see you all go without food completely. I don't know  
14 where the prosecution goes, but I met you over at least  
15 at Antica Roma.

16 Anyway, you are going home to your wife and  
17 children at a fairly early hour. I can't see holding the  
18 jury here longer than 7 o'clock. I have to make arrange-  
19 ments with a midtown restaurant to feed them and, in fact,  
20 I have to make arrangements with two midtown restaurants  
21 to feed them. I have separated the alternates completely

22 In case you haven't noticed, I have separate  
23 transportation for the alternates rather than with the jury  
24 and they are in a separate wing of the hotel where they  
25 are. They were moved out last night. They have been

1 tp7

2 kept completely apart.

3 Do I dare ask whether our quartermaster has  
4 another copy of the cut-up indictment?

5 MR. ENGEL: Yes, sir.

6 THE COURT: All right.

7 MR. DOWD: Judge, will you just check it to make  
8 sure everything is there that should be there?

9 THE COURT: Yes, I will, don't worry about it.

10 Okay, stay around.

11 (Court's Exhibit No. 78 was marked for  
12 identification.)

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1       tpl

T2

2                   (At 4.00 o'clock p.m. a note was received  
3                   from the jury.)

4                   THE COURT: I received another note from the  
5                   jury and it reads as follows:

6                   "I want to hear the testimony on Benjamin  
7                   Tolopka from Barnaba and the testimony from the  
8                   Department of Motor Vehicles Inspector."

9                   I propose to have read to the jury pages 1247  
10                  through 1261, which is Barnaba, and pages 1319 to 1330 of  
11                  Barnaba's direct.

12                  Where is Mr. Richman?

13                  MR. FINE: Your Honor, I am here on behalf of  
14                  Mr. Richman.

15                  MR. CURRAN: Your Honor, might we have the  
16                  consent of the defendant on the record?

17                  THE COURT: Yes.

18                  Mr. Tolopka, do you consent to Mr. Fine filling  
19                  in for Mr. Richman right now?

20                  DEFENDANT TOLOPKA: Yes, sir.

21                  THE COURT: All right.

22                  I started to say, on cross-examination, cross-  
23                  examination by Mr. Richman runs from 1559 through 1624 --

24                  MR. DOWD: May we have the first list of pages,  
25                  Judge?

1 tp2

2 MR. CURRAN: Your Honor, I took notes if you want  
3 what you said.

4 THE COURT: I will do it.

5 On Barnaba's direct, pages 1247 through 1262.  
6 Barnaba's direct, pages 1319 to 1330.

7 Barnaba's cross, from where Mr. Richman starts  
8 at 1559 through to 1624.

9 There was redirect on Barnaba. Redirect runs  
10 from 1834 to 1837.

11 Then there is recross on Barnaba by Mr. Richman  
12 from 1909 through 1919.

13 The testimony of the Motor Vehicles Inspector  
14 is Arnold G. Vismale, and that is at page 4421, and I assume  
15 they want the entire thing read, both direct and cross.

16 Mr. Clerk, would you be good enough to mark the  
17 note from the jury as Court's Exhibit No. 80.

18 (Court's Exhibit 80 was marked for  
19 identification.)

20 MR. CURRAN: Your Honor, I would respectfully  
21 point out to the Court that the testimony of Inspector  
22 Vismale from Motor Vehicles goes, as far as I recall the  
23 record, not to anything that is going to appear in the  
24 direct or cross or redirect or recross of Barnab, but  
25 to the cross of the defendant Tolopka.

1 tp3

2 THE COURT: I am well aware of that, but that  
3 is what they asked for. They want to hear the Motor  
4 Vehicles Inspector's testimony.

5 MR. WARNER: Your Honor, I wonder if before the  
6 jury is called back, can Mr. Fine and Mr. Tolopka and I  
7 speak for a moment?

8 THE COURT: Yes.

9 (Pause.)

10 MR. WARNER: Your Honor --

11 THE COURT: Did I miss something?

12 MR. WARNER: Well, I just wanted to make a  
13 further request on behalf of Mr. Tolopka, and that is the  
14 testimony of the Motor Vehicles Inspector, of course,  
15 concerns P & J Motors -- I am sorry, Fair Motors.

16 MR. CURRAN: Your Honor, it concerns both.

17 THE COURT: Yes, it concerns both. Go ahead.

18 MR. WARNER: May I approach the side bar with  
19 Mr. Fine, your Honor?

20 THE COURT: Yes.

21 (At the side bar.)

22 MR. WARNER: I am just trying to help out.

23 Mr. Tolopka indicated to me that his testimony  
24 on his direct case that he had purchased the car from Mr.  
25 Fair of Fair Motors at the P & J lot in the Bronx.

1 tp4

2 THE COURT: That is not the way I remember it.

3 MR. CURRAN: It is not in the record.

4 THE COURT: That is not the way I remember it  
5 at all.

6 MR. WARNER: This is what the problem is.

7 MR. CURRAN: In any case, they haven't asked  
8 for Tolopka's testimony.

9 MR. WARNER: That is not the point, because if,  
10 in fact, this was in his direct case that it was from Mr.  
11 Fair of Fair Motors bought at another car lot that was never  
12 looked at, I think it would be appropriate for the jury to  
13 hear that testimony.

14 MR. PHILLIPS: The jury asked for certain  
15 testimony.

16 THE COURT: The jury asked for specific things,  
17 I am going to give them specific things.

18 MR. CURRAN: Any more than the cross of Mr.  
19 Tolopka, frankly, I don't mind being read in front of them,  
20 but they didn't ask for it.

21 THE COURT: No, no way.

22 (In open court; jury present.)

23 THE COURT: I received your note, ladies and  
24 gentlemen. I didn't ignore it. It just takes a little  
25 time to find exactly what you want.

1 tp5

2 THE FORELADY: That is all right.

3 THE COURT: The note reads, "I want to hear the  
4 testimony of Benjamin Tolopka from Barnaba and the testimony  
5 from the Department of Motor Vehicles Inspector."

6 In view of the fact that through the trial up to  
7 this point the court reporters have been extremely quiet,  
8 I am letting him do it again.

9 (A portion of the testimony of the witness  
10 Barnaba was read to the jury.)

11 THE COURT: I stopped the reading of the testi-  
12 mony at this point since I felt that we were getting away  
13 from that requested by the jury.

14 All right, would you read the next section,  
15 please, Mr. Reporter.

16 (A portion of the witness Barnaba's testimony  
17 was read to the jury.)

18 THE COURT: I am going to take a break right  
19 now.

20 Mr. Marshal, will you take the jury out.

21 (The jury left the courtroom.)

22 THE COURT: I recognize it is unusual, but I  
23 don't know if you noticed one of the jurors, I think, had  
24 to go to the men's room.

25 (Recess.)

1 tp6

2 (In open court, in the absence of the  
3 jury.)

4 MR. WARNER: Your Honor, was the jury's note  
5 signed by the forelady?

6 THE COURT: Take a look at it. It is unsigned.

7 MR. ELLIS: I think they are all in different  
8 handwriting.

9 THE COURT: It doesn't matter. If one juror  
10 wants to hear it, they will hear it.

11 MR. WARNER: I understand. The way I heard it,  
12 it sounded like one juror wanted to hear this testimony  
13 and not the others. I was just interested.

14 THE COURT: What is the difference?

15 (Jury present.)

16 THE COURT: All right, Mr. Reporter, would you  
17 continue reading.

18 (A portion of the testimony of the witness  
19 Barnaba was read to the jury.)

20 (A portion of the witness Vismale's testimony  
21 was read to the jury.)

22 MR. CURRAN: Your Honor, may I approach the bench  
23 with Mr. Richman?

24 THE COURT: Yes.

25 (At the side bar.)

1 tp7

2 MR. CURRAN: There is additional cross-examination  
3 by Mr. Ellis, and I just want to call it to your Honor's  
4 attention, of Vismale. It is not by Mr. Richman.

5 MR. RICHMAN: It doesn't relate to Mr. Tolopka  
6 at all, it relates to Mr. Mamone. It is with reference  
7 to Jimmy's Car Lot and it had nothing to do with Tolopka's  
8 testimony.

9 MR. CURRAN: I don't care. I just want to call  
10 it to your attention.

11 MR. RICHMAN: I saw it.

12 THE COURT: Okay.

13 (In open court.)

14 THE COURT: All right, ladies and gentlemen,  
15 I believe that answers the last request.

16 Mr. Marshal.

17 (At 6.35 p.m., the jury returned to the juryroom  
18 to continue to deliberate upon a verdict.)

19 THE COURT: All right, stay around. Don't wander  
20 off.

21 (At 7.00 o'clock p.m. in open court in the  
22 absence of the jury.)

23 THE COURT: I ask the marshal to check to see  
24 who would be going to religious services tomorrow. There  
25 is one person on the jury who will.

1 tp8

2 The marshal at the same time indicated that we  
3 are having transportation brought here at 7 o'clock to get  
4 them to eat and the jury indicated that they had just about  
5 had it for today. Under the circumstances, we will break  
6 at 7 o'clock.

7 MR. PANZER: It is 7 o'clock now.

8 THE COURT: Yes, it is 7 o'clock now. I know it.  
9 Tomorrow morning we will back here at 11 o'clock.

10 Please, it is most important that all counsel be  
11 here. Also, needless to say, it is most important that  
12 all defendants be here. The next request for testimony  
13 might be involving your client and I want you here and I  
14 want the clients here, too, to hear what is going on.

15 See you at 11 tomorrow.

16 MR. FISHER: Your Honor, would you advise the  
17 marshals not to bring the defendants over until 11?

18 THE COURT: I don't know what the marshals can  
19 do about it.

20 (Adjourned to March 10, 1974, at 11.00 A.M.)  
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